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Waste sites may be major liability for CPI

The property at 1 Flower St. in Chester, Pa. lies in the shadow of the Commodore Barry Bridge which spans the Delaware River in the industrial and petrochemical sprawl near Marcus Hook. The lot, owned by Melvin R. Wade, is littered with several thousand drums of chemical wastes, many charred, ruptured, corroding and leaking. The shell of a burned out building, the victim of a spectacular fire in early 1978, is filled with a jumble of drums. From time to time, small fires, caused by spontaneous combustion, break out at the site. Five tank trucks filled with wastes are parked near the building; some are leaking.

It was here that employees of Melvin Wade, who runs a rubber recycling operation, unloaded truckloads of hazardous industrial waste delivered by ABM Disposal Service Co. In broad daylight, thousands of gallons of toxic wastes, drummed on flatbed trucks or in tank trucks, were delivered to the site to be stored in drums, dumped into haphazard waste ponds, or simply left to seep into the ground. Some of the wastes were mixed with trash and disposed of in landfills.

ABM paid Wade \$1.50 for each of the 10,000 drums that he estimates he received each year since 1976. He could also sell empty drums to scrap dealers for an additional \$1.50 to \$3/drum, depending on condition. Wade says he suspected ABM of cheating him. He suspected that ABM was being paid considerably higher fees than what he was receiving and he frequently tried, unsuccessfully, to discover the names of ABM's clients.

The Justice Dept. is also trying to find the sources of ABM's waste.

On April 20, Justice filed a suit in U.S. District Court in Philadelphia under Section 7003 of the Resource Conservation and Recovery Act. The suit, naming Wade, his company, Eastern Rubber Reclaiming, and ABM, seeks injunctive relief to remedy "an imminent and substantial endangerment to health and the environment" by removing all wastes from the site and disposing of them "in accordance with a plan approved by the Environmental Protection Agency." EPA estimates that the cost of cleaning up the Wade site, which contains some 27 chemicals considered

to be hazardous under RCRA, is between \$1.5 and \$3.5 million.

The first step in the Wade legal proceeding will be a discovery period in which Justice and EPA will attempt to determine whose wastes are at the site. And if they find out, Joseph Donovan, an EPA attorney, says the prosecution intends to amend the suit and attempt to prove liability on the part of the waste generators.

Going to the Source: That move will represent a major shift in hazardous waste litigation as the government launches a campaign to identify waste

EPA and Justice launch an aggressive campaign to sue over dumpsites

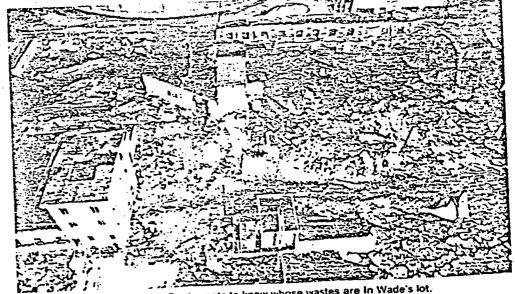
sites that present a hazard and hold waste generators responsible for cleanup. Justice and EPA, as well as the attorneys general in many states, have lately identified a number of legal statutes (some in the common law), which they hope to employ, particularly where owners of disposal sites have disappeared, lack the necessary capital, or, as in the case of Wade, claim to be bankrupt.

According to John Seitz of EPA's enforcement division, the agency intends to pursue known waste generators as a matter of policy, particularly if they

acted irresponsibly or if it is the only avenue open for getting a dump cleaned up. Even if the dump owner has the necessary funds, irresponsible waste generators may "have to pay for part of the cleanup," says Seitz.

To date, Justice and EPA have filed three other suits involving hazardous chemicals. The first is against the Kin-Buc landfill in Edison, N.J., and seeks \$1 million in damages and \$680,000 in fines from the defendants, a group of linked companies that includes Scientific Inc., SCA Services, Kin-Buc Inc., and Earthline Co. (CW, Feb. 14, p.13). The landfill, which operated from 1969 to 1977 under a license from New Jersey's Public Utilities Commission, covers 220 acres and during the years 1973 through 1976 accepted for disposal 71 million gal. of wastes from as far away as Massachusetts. The complaint cites numerous violations of the Rivers and Harbors Appropriation Act of 1899, Federal Water Pollution Control Act, Solid Waste Disposal Act RCRA and the Common Law of Nuisance.

The case is currently in discovery and the names of companies whose wastes were disposed of at the site have already been disclosed. Chemical firms listed include Allied Chemical, American Cyanamid, Ashland Chemical, Celanese, Dart Industries, Drew Chemical, Diamond Shamrock, Du Pont, Exxon, FMC, GAF, Gulf, Hatco, Inmont, Koppers, Monsanto, NL Industries, Olin, Pennwalt, Reichhold, Stauffer Chemical, Tenneco, Union Carbide, Uniroyal, and Witco. EPA's Seitz says the waste generators had reason to believe they were acting responsibly. But the Justice Dept. request for expedited discovery recognizes the option of bringing charges



View from the bridge: Justice Dept. wants to know whose wastes are In Wade's lot.



Imminent hazards: Government attorneys will use all available laws to sue over waste sites.

against them, citing the "potential for naming a large number of additional defendents who have contributed toxic wastes for disposal at the landfill."

The second suit seeks the cleanup of a warehouse in Youngsville, Pa., in which Robert J. Burns has stored polychlorinated biphenyls. (Burns has also been charged in North Carolina with disposing of PCBs along 200 miles of roads in that state.)

The most recent case, filed in U.S. District Court in Cleveland last week, charges Alvin Laskin, owner of Laskin Greenhouse and Waste Oil Co. (Jefferson, O.), with oiling roads with PCB-containing waste oil and burning similar waste in boilers at his greenhouse.

Those suits are just the beginning. EPA Deputy Administrator Barbara Blum says that EPA and Justice will investigate 300 cases/year and prosecute 50 cases/year beginning in fiscal 1980. And

in the very near future, Justice is planning to file suit against Hooker Chemicals and Plastics for damages caused by its inactive Love Canal and other waste sites in Niagara Falls, N.Y.

Stepping Up Surveillance: In a memo to EPA regional administrators in March, Blum pointed out that RCRA will not address itself to inactive sites and the agency must move immediately to "seek control of serious hazards from either inactive and abandoned sites or mismanaged sites. An aggressive program is needed now and on a scale greater than anticipated." Blum asked the administrators to appoint technical and enforcement coordinators, and asked the Justice Dept. to assign attornevs to work with each EPA region. She now plans to divert 50 staff members to conduct waste investigations and do casework on waste sites.

To fund the expanded effort, EPA last

week sent the Office of Management and Budget a supplemental budget request for \$131 million, creating 190 new jobs at the EPA.

EPA has also updated its list of 103 sites that could pose a public health hazard. The original list was prepared last fall under pressure from Congress for the agency to inventory potentially dangerous dumps following the disclosure of conditions at Love Canal. EPA conducted a hasty survey of its regional offices and told Congress it estimated that 638 dumps in industrial areas might contain hazardous wastes and that 103 were known to contain wastes that could pose a health hazard (CW, Nov. 29, 1978, p. 15). Representative Albert Gore. Jr. (D., Tenn.), who was chairing Congressional hearings on the Love Canal, termed EPA's effort "completely inadequate." The agency's updated list contains 135 known sites but is otherwise little changed.

A report prepared for EPA by Fred C. Hart Associates (New York) is also critical of the agency's estimates. The Hart report was completed in February; EPA has yet to make it public. A copy obtained by *Chemical Week* indicates that the problem is far more serious than EPA's earlier estimates.

According to the Hart report, a reasonable estimate of the number of active and inactive waste sites in the country is 50,644, compared with EPA's estimates of 22,454. Using EPA's estimate that 90% of the wastes generated are disposed of improperly and that 75% of the waste sites are located in wetlands, on floodplains, or over major acquifiers, the report assumes that 34,452 sites could pose significant problems. EPA estimates assumed 21,933.

The Hart report also used EPA's arbi-

Case studies estimate waste cleanup costs

To estimate the cost of cleaning up hazardous-waste disposal sites for the Environmental Protection Agency, consultants from Fred C. Hart Associates (New York) reviewed reports and data on 232 hazardous-waste sites. Twenty four of the sites were selected for cost study as representing a cross-section of the problems potentially posed by waste disposal.

The average cost of remedial containment measures is \$3.6 million/site; the average cost to permanently close a site is \$25.9 million.

Hart consultants based their estimates only on preliminary study and available data. And the sites studied do not include many that environmental and law-enforcement officials consider as posing far more serious problems, such as Kentucky's "Valley of the Drums" (CW, Feb. 14, p. 13). But the figures do indicate, at least, what it would cost to clean up disposal sites.

Among the sites:

Gary, Ind. Ernest DeHart's Mid-Co industrial-waste storage firm had operated sites on 15th Ave. and on Industrial Highway. There were major fires at

both sites in late 1976 and mid-1977. There are 40,000 drums, 28,667 of which still contain wastes, at 15th Ave. and an estimated 40,000 to 50,000 drums at Industrial Highway. The sites have pits filled with sludge residues. Wastes include cyanide, solvents, plating wastes, and acids. Cleanup costs, depending on the extent to which the sites are secured, are estimated to range from \$4.8 million to \$22.5 million.

■ Gordon, Ga. Gordon Service Co. received Georgia's first permit to operate a landfill for hazardous wastes in February 1978. The site has received 3.5 million lbs. of wet waste consisting of pesticides, heavy metals, oil, sludges, and paint wastes from 17 sources. On July 17, 1978 it was ordered closed within five

trary assumption that 4% were likely to be major problems, and arrived at an estimate that 2,027 sites pose very serious problems, compared with EPA's earlier estimate of 1,204.

Hart also reviewed available information on 232 known hazardous waste sites. Analysis of the data indicated that 85% of the problem sites are storage facilities, ponds, or landfills, and that the problems posed in 90% of those cases are surface and groundwater contamination.

Of the sites surveyed, remedial action had been taken in 26% of the cases. Of 110 facilities with wastes that could be identified by SIC code, 38.2% were in chemicals and allied products, 7.3% in petroleum refining, 8.2% in primary metals, 8.2% in mining and quarrying, and 7.3% in metal mining. The others are in 18 SIC groups.

To estimate the costs of site cleanup,



LaFalce: "Superfunds" and Toxic Torts

Hart conducted detailed studies of 24 known sites that could pose potential problems (see sidebar, p. 16). Costs for cleaning up those sites averaged from \$3.6 million for immediate corrective steps to \$25.9 million for complete closure of the sites.

After eliminating possible radioactive waste dumps, Hart arrived at a national cleanup bill of from \$6.2 billion to \$44.2 billion.

Deep Pockets: Because Hart estimates that only 50% of the sites are "financially viable," about \$22 billion might be collectible through the courts. The imminent hazard statutes in RCRA and sections of the Clean Water Act can be used to bring suit against the owners of a waste site. To extend liability to the companies and individuals that produced the waste, attorneys looking into that question cite the common law of nuisance, negligence, and strict liability.

Richard Robinson, an attorney in EPA's enforcement division, says there are three main legal concepts that can be used to prosecute waste generators. Companies could be held liable for straight negligence if it could be proved that they failed to exercise proper care in choosing a handler or disposer of their waste. If the wastes can be shown to be dangerous, burden rests with the generator to show he had reason to believe the disposer would operate properly. In a second type of negligence case the prosecutor needs less proof if he can show that the wastes are "inherently dangerous," Robinson says. The third type of case hinges on strict liability, where the prosecution need only demonstrate that the wastes are extremely dangerous and injured parties need not show proof of negligence.

To defend against negligence suits,

Robinson says, companies would try to show that the injured party played a contributory role. In strict liability cases, the defendant would try to demonstrate that the waste contractor had assumed the risk because he knew the substance, its dangers, and had knowingly accepted responsibility.

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Companies may also be liable for waste sites they no longer own. A legal memorandum prepared by Mead Corp.'s law firm, Troy, Malin & Pottinger, during Mead's recent takeover battle with Occidental Petroleum Corp., cites statutes that might be used to sue Oxy subsidiary, Hooker Chemical, for damages caused by wastes from the Love Canal. In the opinion of Mead's lawyers. Hooker's sale of the property to the Niagara Falls Board of Education "does not absolve it of liability for subsequent damage." The lawyers argue that Hooker failed to adequately warn the board of the area's inherent hazards. They also contend that the long time between the sale of the property and the damage claims does not absolve the company.

The company can also be sued for negligence over injuries caused by seepage from the site, the memorandum says. It cites a New York court ruling that negligence depends on the creation of a dangerous condition and "ownership is immaterial."

The lawyers see a possibility that Hooker could be sued on the basis of strict liability because hazardous waste disposal is "an abnormally dangerous activity." They also contend that the deed release signed with the Board of Education is not binding because of inadequate disclosure of hazards and that proof of injury by claimants need only rely on a "preponderance of evidence" based on factors such as the

days because of permit violations, but the company obtained a court order allowing the site to remain open until the dispute was resolved. It is located above the aquifer that supplies Tuscaloosa, Ala. Cleanup cost estimates range

from \$21,000 to \$1.6 million.

■ Portage County, O. Summit National Liquid Services is appealing an order to dispose of 750,000 gal. of stored liquid wastes in a manner acceptable to the Ohio Dept. of Natural Resources. The site contains two 3,000-gal. containers of hexachlorocyclopentadiene (C56) mixed with methylethyl ketone, as well as several thousand drums and a leaking 300,000-gal. concrete storage tank. Remedial measures are estimated to cost \$1.7 million.

 Riverside, Calif. An estimated 32 million gallons of waste were dumped into Stringellow Quarry in the 19 years before it was closed in 1972. Runoff and seepage contaminated the groundwater with zinc, lead, mercury, chromium, and DDT. About 300,000 gal. of contaminated liquid remains in ponds. The regional Water Quality Control Board took over the site in 1975. Last week, state Senator Robert Presley (D., Riverside) asked the state health department to study cancer, leukemia, and birth defect rates of nearby residents. Cleanup estimates range from \$370,000 to \$3.7 million.

Southington, Conn. Solvents Recovery Services of New England has disposed of solvents, waste paints, oils and still bottoms at a 3-acre site since 1955. An incinerator is no longer in operation and wastes, which were formerly incinerated, are now stored onsite in drums or tanks. The site contains 1,000 drums. Wastes were identified in a septic system. Ground and surface water have been contaminated. The state and the company are negotiating cleanup measures. Cost estimates run from

\$295,000 to \$3.7 million. Dallas, Tex. A landfill operated by Bio-ecology and closed by the Texas

Dept. of Water Resources in February 1978 contains chromium sludge, plating wastes, cyanide, ketones, and aromatic solvents. The site contains 150 drums of chemicals. The state is spending \$28,000

for a general cleanup; cost of complete site closure is estimated at \$92,000.

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incidences of illnesses, birth defects.

Action in Congress: Congress may deal with problems posed by hazardous wastes. Last week EPA submitted to the Office of Management and Budget proposed legislation that would create a "superfund" for cleanup of oil and hazardous-waste spills and of "uncontrolled" waste sites.

The bill, which will probably reach Congress in May, would require chemical companies to pay into the fund based on their use of organic feedstocks. Heavy metal industries' payments would be based on production. Money contributed by industry would be combined with federal appropriations. The fund would grow at the rate of \$500 million/year

until it reached \$6 billion.

The fund would provide for emergency assistance and would pay to "contain" the waste sites where treatment or removal are the most effective means of containment. States would pay for more extensive cleanup and maintenance of the sites after one year. The fund would not pay for third party claims such as property damage. The proposed bill requires EPA to sue to recover money spent from the fund, although there would be a limit to liability—possibly \$50 million/company for each incident.

The concept is supported by Representatives Bob Eckhardt (D., Tex.), James Florio (D., N.J.) and John LaFalce (D., N.Y.). LaFalce also has introduced a superfund bill and another he calls the Toxic Torts Act (H.R. 1049) that would "create a federal cause of action for victims of toxic substances, permitting them to seek redress against negligent

manufacturers."

Staying Clean: What all this means to chemical companies, according to environmental consultant Edward W. Kleppinger, is that the "only completely safe thing for a large company to do is to handle all of its own waste."

He advises companies to locate all previously disposed of waste, even if it means collecting oral history from former employees. If waste has not been properly disposed, Kleppinger says "smart companies will move very aggressively" to get it back. "Problems like this won't go away. They just get worse, so the sooner waste problems are located and corrected, the cheaper it will be."

He also recommends that companies carefully supervise the disposition of their wastes, that they make regular checks of waste contractors and routine on-site inspections. "It should be obvious by now, that a permit doesn't mean a thing," he says.

ALAN HALL